

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas Daffron,
Petitioner,

vs.

NO: 12 WC 42573
14 IWCC0712

Menard Correctional Center
Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

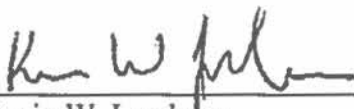
A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision of the Commission dated August 22, 2014 having been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated August 22, 2014 is hereby vacated and recalled pursuant to Section 19(f) for clerical errors contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion on Review shall be issued simultaneously with this Order.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: SEP 11 2014
KWL:vf
42


Kevin W. Lambdin

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

<input type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THOMAS DAFFRON,

Petitioner,

vs.

NO: 12 WC 42573
14 IWCC0712

MENARD CORRECTIONAL CENTER,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, and prospective medical treatment, and being advised of the facts and law, reverses the Decision of the Arbitrator for the reasons specified below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Findings of Fact and Conclusions of Law

- 1) Petitioner testified he began working as a correctional officer for Respondent in 2001, and that during the course of his employment from 2001 through 2012 he worked a variety of assignments, of which 75% was work in the cell house or gallery. Petitioner testified he initially worked in the condemned unit, then in North 2 cell house, the segregation unit, until 2008, when he began working as a Relief Officer. Petitioner testified that his job duties while on gallery assignment included cranking cell house

doors off deadlock, opening and closing cell doors, cuffing and uncuffing inmates, rapping cell doors, locking and unlocking food slots, and securing gallery doors. Petitioner also testified that 90% of his time was spent working the midnight shift from 11:00 p.m. until 7:00 a.m. (T11-22).

- 2) On cross examination, Petitioner admitted he has numbness and tingling symptoms in his hands and elbows started in 2004, that he never sought medical care for those problems, that the symptoms were not severe initially, that he continued working, that he believed his symptoms were a result of his work duties but that he never reported his condition to Respondent up until the filing of his Application for Adjustment of Claim. (T53-55). Petitioner also admitted that he did voice complaints of numbness and tingling in his hands in 2009 when he was treating with Dr. Bassman for a prior shoulder injury, but that the doctor never advised him of the cause for his symptoms or of a possible diagnosis for his complaints. (T56-58).
- 3) Petitioner testified that on November 2, 2012, he injured his right shoulder while carrying an inmate in a sit-chair down a flight of stairs to the health care unit. (T24-25). Petitioner filed an Application for Adjustment of Claim with respect to this November 2, 2012 right shoulder injury, under 12 WC 42573. This claim was pending on review as of the date of oral arguments in this matter.
- 4) On November 21, 2012 Petitioner sought treatment with Dr. Paletta for his right shoulder condition. Petitioner testified that he advised Dr. Paletta of his right shoulder injury, and that he also discussed symptoms he was having in his wrists and elbows, including tingling and numbness in his hand and both arms. Petitioner testified he previously discussed symptoms of bilateral hand numbness with Dr. Bassman, the physician who performed his prior left shoulder surgery, but that no physician had ever discussed carpal tunnel or cubital tunnel syndrome with him. (T26-27).
- 5) Dr. Paletta's November 21, 2012 office visit note indicates Petitioner provided a history of working as a correctional officer for 11 years, and that on November 2, 2012 he sustained a right shoulder injury while carrying an inmate down a flight of stairs. Petitioner also reported a several-year history of numbness and tingling into both hands, and pain in the elbows and wrists. Petitioner provided a history of increased right elbow pain and symptoms since the November 2, 2012 injury. Dr. Paletta diagnosed a possible recurrent labral tear of the right shoulder, bilateral cubital tunnel syndrome, and possible bilateral carpal tunnel syndrome. Dr. Paletta recommended an MRI arthrogram of the right shoulder, and EMG/NCV studies of the upper extremities. Dr. Paletta opined at that November 21, 2012 office visit that the November 2, 2012 work related injury was a causative factor in Petitioner's current right shoulder condition. (PX3).

- 6) On December 3, 2012, Petitioner underwent an EMG/NCV study of the upper extremities. At that time, he provided a seven-year history of gradually progressive sharp throbbing and aching bilateral hand pain, weakness, intermittent global hand numbness, shooting forearm pain. Petitioner attributed his symptoms to overuse at work. The EMG/NCV study was significant for bilateral carpal tunnel syndrome, left greater than right, and mild to moderate bilateral cubital tunnel syndrome. (PX4).
- 7) On December 10, 2012 Dr. Paletta recommended a course of conservative care for Petitioner's bilateral hand, elbow, and shoulder symptoms, including injections of the glenohumeral joint and AC joint, Medrol Dosepak, Naprosyn, and physical therapy for Petitioner's right shoulder condition. (PX3, RX3).
- 8) On January 28, 2013, Dr. Paletta recommended continued physical therapy or shoulder debridement surgery based upon Petitioner's continued complaints and MRI results. Following a course of physical therapy, Petitioner underwent right shoulder surgery on September 10, 2013. (PX3, T30).
- 9) On July 15, 2013, Petitioner was seen in follow up by Dr. Paletta. Petitioner complained of continued intermittent numbness and tingling in his fingers, particularly in his fourth and fifth fingers. Dr. Paletta diagnosed bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Based upon Petitioner's continued symptoms, he recommended Petitioner proceed with bilateral carpal tunnel and bilateral cubital tunnel surgeries, after Petitioner underwent right shoulder surgery. With regard to the issue of causation, Dr. Paletta opined that "based on the duration of his job and his job duties and the correlation of onset and worsening of his carpal tunnel and cubital tunnel symptoms to those job activities, that his job is a causative or aggravating factor in both the cubital tunnel and carpal tunnel syndromes." Dr. Paletta further opined that Petitioner's ongoing treatment for his carpal tunnel and cubital tunnel is related to his job activities. (PX3).
- 10) Petitioner testified he thoroughly explained his job duties and outside activities to Dr. Paletta during the course of his treatment, including a history of symptoms in his hands and arms while working, with worsening of same while performing activities such as turning keys, pulling on doors, rapping bars, opening or closing of food slots. Petitioner testified that he sometimes used both hands to turn keys because the locks were sticky and hard to turn, and that while he is left-handed, he used his left hand for most tasks until the pain became too much and then he would switch and use his right hand. Petitioner testified that half of the locks in the galleries turn right, and other half turn left, and that he had to use both arms usually to turn all the locks, to open doors, and to rap bars. (T32-35).

In Durand v. Industrial Commission, 224 Ill.2d 53, 65(2006), the Illinois Supreme Court found that the "date of manifestation is not necessarily when symptoms first began, but the date on which both the injury and its causal link to the employee's work become plainly apparent to a reasonable person. The Court also held that "an employee who continues to work on a regular basis despite his own progressive ill-being should not be punished merely for trying to perform his duties without complaint." *Id.* The Commission notes that, as in Durand, Petitioner's description and understanding of his bilateral upper extremity pain prior to November 21, 2012 was sketchy and equivocal, having gradual worsening symptoms and no medical treatment or diagnosis for same. Therefore a reasonable person would not have known of this injury and its putative relationship to his work activities before November 21, 2012.

Based upon a review of the record as a whole, and relying on Durand v. Industrial Commission, the Commission finds Petitioner sustained accidental repetitive trauma injuries arising out of and in the course of his employment on or about November 21, 2012, and that his current condition of ill-being with respect to his bilateral hands and elbows is causally related to same. The medical records and Petitioner's testimony indicate Petitioner had a seven-year history of bilateral hand and elbow symptoms prior to presentation to Dr. Paletta on November 21, 2012. The medical records and Petitioner's testimony further indicate that November 21, 2012 was the date Petitioner actually became aware of his physical condition and its relation to his work duties through medical consultation with Dr. Paletta. On the date of that medical consultation Dr. Paletta diagnosed bilateral carpal tunnel and bilateral cubital tunnel syndrome. Dr. Paletta specifically opined that based on the duration of Petitioner's job, job duties, and the correlation of onset and worsening of his carpal tunnel and cubital tunnel symptoms to those job activities, that Petitioner's job is either a cause or aggravating factor with regard to his cubital tunnel and carpal tunnel syndromes. Dr. Paletta also opined the need for ongoing treatment for carpal and cubital tunnel syndrome was related to Petitioner's job duties. As noted by the Court in Durand, an employee who diligently works through their progressive symptoms until it affects their well-being should not be penalized. The Commission finds Petitioner's testimony and medical records indicate he diligently worked through his gradual and progressive hand and elbow symptoms until his symptoms became so severe that he sought treatment for same on November 21, 2012. The Commission also mindful that the record is absent of any Section 12 examiner's opinion to rebut the opinions offered by Dr. Paletta. Accordingly, the Commission finds Petitioner's manifestation date was November 21, 2012.

With regard to the issue of notice, the Commission finds Petitioner provided timely notice pursuant to Section 6(c). Petitioner's repetitive trauma injuries manifested themselves on or about November 21, 2012. Petitioner filed his Application for Adjustment of Claim on December 11, 2012. On December 5, 2012, Petitioner mailed a copy of his Application to Respondent, or 14 days after the date of injury, as evidenced by the proof of service. (ARB EX2). Based upon the above, the Commission finds Petitioner provided notice of his accident to Respondent within the 45 days set by statute.

Based upon the findings of accident, notice, and causal connection herein, the supporting medical records, and Dr. Paletta's surgical recommendations, the Commission finds Petitioner it entitled to an award of prospective medical recommended by Dr. Paletta, to include bilateral carpal tunnel surgeries, and bilateral cubital tunnel surgeries.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 24, 2013, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$3,425.00 for medical expenses under §8(a) of the Act.



IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the prospective medical treatment prescribed by Dr. George Paletta, including bilateral carpal tunnel surgeries, and bilateral cubital tunnel surgeries, pursuant to §8(a) of the of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

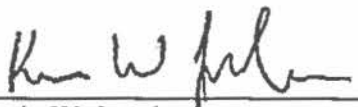
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: SEP 11 2014
KWL/kmt
O-05/06/14
42


Thomas J. Tyrrell

Michael J. Brennan

DISSENT

I respectfully dissent from the decision of the majority. I disagree with the majority's interpretation of the record. I find Arbitrator Granada's opinion to be both thorough and well reasoned. I would affirm this decision in its entirety without modification.



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

141WC00712

DAFFRON, THOMAS

Employee/Petitioner

Case# **12WC042573**

MENARD CORRECTIONAL CENTER

Employer/Respondent

On 10/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

CERTIFIED AS A TRUE AND CORRECT COPY
PURSUANT TO 820 ILCS 306/14

OCT 24 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

19(b)

14IWCC0712

Case # 12 WC 42573

Consolidated cases: N/A

Thomas Daffron

Employee/Petitioner

v.

Menard Correctional Center

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Collinsville, IL**, on **09/23/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☒ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

14IWCC0712

On the date of accident, 11/21/2012, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was not* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, the Petitioner's average weekly wage was \$1,135.15.

Respondent is entitled to a credit under Section 8(j) of the Act.

ORDER

No benefits are awarded since Petitioner did not sustain accidental injuries on November 21, 2012, that arose out of and in the course of his employment with Respondent. Claim denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

10/23/13

Date

OCT 24 2013

FINDINGS OF FACT

Petitioner is a 40-year-old, left-hand dominant correctional officer from Menard Correctional Center. Petitioner alleges a date of accident of November 21, 2012, for repetitive trauma injuries to his right and left hands and right and left arms as a result of his job duties with Respondent. This case proceeded to hearing pursuant to Section 19(b). The issues in dispute are: 1) accident, 2) notice, 3) causal connection, 4) medical expenses, and 5) prospective medical treatment.

Petitioner testified that he began his career as a correctional officer on October 8, 2001. He testified that he has worked a variety of assignments as a correctional officer at Menard Correctional Center. 90 percent of the time, he has been assigned to the midnight shift from 11 p.m. to 7 a.m. shift. His first assignment was in the condemned unit where he worked until the beginning of 2003. He then worked in the north 2 cell house or the segregation unit. He estimated that he worked in the north 2 cell house or the segregation unit for five years. Then, his assignment was as a general relief officer. Petitioner estimated that he spent 75% of his time in the cell house of the galleries. Petitioner worked at Menard MSU or medium security unit from June to September 2012.

Petitioner served on the tactical team from 2002 to 2003. As part of his duties, he performed cell extractions and worked with batons while on the tactical team. As a member of the tactical team, he practiced twice a month for two hours. During the practices, he would do various things during the two hours depending on what they were focusing on. If they were called into action, they would have to do a cell extraction.

Petitioner testified that his job duties at Menard Correctional Center have included cranking cell house galleries off deadlock; opening and closing doors; handcuffing and uncuffing inmates; bar rapping gallery and entrance doors; rapping shower doors, yard doors; locking and unlocking padlocks; opening and closing food slots; and 30 minute mandatory gallery checks. On cross-examination, Petitioner testified that on the 11 p.m. to 7 a.m. shift, he would normally only crank the cell houses if he worked the gallery once per shift. He estimated that the cranking of the cell house galleries off deadlock would take approximately five to ten minutes total, including any travel time to the other gallery cranks. He estimated that he would open or close a cell door on the 11 p.m. to 7 a.m. shift zero to ten times per shift. Petitioner estimated that he would handcuff or uncuff inmates zero times per shift when working in the general division cell house. When working in the north 2 cell house or segregation house, he would cuff and uncuff the inmates who needed insulin, but the last time he was assigned to the north 2 cell house or segregation house was in 2008. Petitioner testified that on the 11 p.m. to 7 a.m. shift, he did not rap cell doors. He only rapped gallery and entrance doors. He would rap two to five doors on the 11 p.m. to 7 a.m. shift, depending on which cell house he worked in. On the 11 p.m. to 7 a.m. shift, he would rap bars for approximately ten minutes. As for locking and unlocking padlocks, Petitioner would only do this in the north 2 cell house or the segregation house for the food slots, and he had not worked in the north 2 cell house or the segregation unit since 2008.

Petitioner also worked in the gallery, in the tower, as a school officer, and as a chapel officer. As a school officer and a chapel officer, there would not be any bar rapping and very little turning keys. As a tower officer, he would not be turning keys or rapping bars. Petitioner confirmed that he was assigned to the tower in 2009. He testified that that if he was assigned to the tower the first half of the shift, he would work in the cell house the second half. If he was assigned to the tower in the second half, he started the night in the cell house. If he was assigned as a wing officer the first half of the shift, he would not be cranking any doors open.

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Petitioner described the following work activities worsened his symptoms in his hands and arms:

Turning keys would cause pain in both my right arm and left arm. Pulling on the doors, checking to see if they're locked, rapping bars, opening and closing the food slots.

Petitioner testified that he had symptoms of numbness and tingling since 2004. He started feeling numbness in his hands and tingling in his elbows. He never saw any doctor for his problems. He explained that the symptoms were not very strong in the beginning, but he noticed something was different. Petitioner testified that he believed in 2004 that his symptoms were coming from his work duties. He continued to have symptoms and did not report his condition to Menard until filing an Application for Adjustment of Claim.

On November 21, 2012, Petitioner first saw Dr. George Paletta at The Orthopedic Center of St. Louis. He primarily presented for evaluation of a chief complaint of right shoulder, but also has associated complaints of numbness and tingling into both hands; elbow pain; and wrist pain. Petitioner's history of right shoulder symptoms dated to an episode or incident, which occurred on November 2, 2012 involving an incident where Petitioner was lifting a 190 pound inmate. As he attempted to lift the inmate, he noted immediate pain in the right shoulder. He finished his shift that day, but had ongoing pain. He then reported it the next day, but had not had any medical attention to date. He used Advil and Tylenol with minimal relief of symptoms. Petitioner complained of pain deep within the shoulder.

Petitioner had a prior history of nonwork-related shoulder problem that ultimately led to surgery performed by Dr. Donald Bassman in August of 2011. Petitioner was back to full work by November 2001 and denied residual problems with the shoulder up until the point of his injury. Petitioner had two previous surgeries on the left shoulder, both by Dr. Bassman. Petitioner reported some residual issues with the left shoulder, but nothing related to this work incident.

Petitioner reported to Dr. Paletta that this work incident resulted solely in injury to the right shoulder. In addition, Petitioner complained of several-year history of numbness and tingling into both hands, as well as, elbow pain and some wrist pain bilaterally. The right elbow pain and symptoms had increased since this injury which occurred on November 2, 2012. Petitioner reported continuing to work full duty. He reported the pain was confined to the shoulder itself. He felt like at times the shoulder wants to slip out of place, but he really had no true instability episodes. Petitioner reported a lot of pain at night and difficulty sleeping on the affected side. He stated that his current right shoulder pain felt similar to the labral pain he recalled with his previous shoulder problem. Physical examination was performed. Dr. Paletta's impressions included the following: 1) possible recurrent labral tear, right shoulder; 2) bilateral cubital tunnel syndrome; and 3) possible bilateral carpal tunnel syndrome. Dr. Paletta noted that with respect to Petitioner's more chronic complaints of numbness and tingling in elbow and wrist pain, he recommended EMG and nerve conduction studies of both upper extremities. Dr. Paletta recommended that Petitioner continue to work full duty.

On December 3, 2012, Petitioner presented to Dr. Daniel Phillips at Neurological & Electrodiagnostic Institute, Inc. to evaluate bilateral upper extremity pain and numbness on a referral from Dr. Paletta. Petitioner completed a document entitled "Patient Questionnaire/Health History". Petitioner reported numbness in fingers, hands, wrists, tingling in fingers, hands, wrists. Petitioner reported that his symptoms began 7 years ago. Petitioner reported that the pain wakes him up at night. He also reported pain/stiffness/numbness/tingling upon getting out of bed in the morning. When asked what aggravated his symptoms, he reported "work lifting

Thomas Daffron v. State of IL / Menard Correctional Center

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Attachment to Arbitration Decision

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weights". Petitioner was noted to be a 39-year-old left-handed gentleman with a long history of gradually progressive sharp throbbing aching bilateral hand pain, weakness and intermittent global hand numbness. Petitioner reported shooting forearm pain. Cervical radicular symptoms were not reported. Bilateral upper extremity electrical diagnostic studies were requested. Petitioner's hobbies included golf and weightlifting. Petitioner was noted to be 6'6" and 318 lbs. Petitioner exhibited positive Tinel signs at the cubital tunnels, positive Tinel signs at the carpal tunnels. Dr. Phillips noted moderate sensory motor median neuropathy across the left carpal tunnel and milder median sensory neuropathy across the right carpal tunnel. There was also mild-moderate demyelinating ulnar neuropathies across the elbows.

On December 10, 2012, Dr. Paletta reviewed the EMG and Nerve Conduction Study performed by Dr. Phillips at the Neurological and Electrodiagnostic Institute on December 3, 2012. Dr. Paletta noted that the studies demonstrated evidence of moderate sensory and motor median neuropathy across the left carpal tunnel with more mild right carpal tunnel. There was also evidence to mild-to-moderate demyelinating ulnar neuropathies across the level of the elbows bilaterally. Dr. Paletta recommended conservative treatment included anti-inflammatories and night splints. Petitioner was to follow-up in six to eight weeks to assess his response to the nonsurgical treatment. Dr. Paletta noted that the upper extremity EMGs did not change the recommendation with regard to work restrictions.

On July 15, 2013, Petitioner returned to Dr. Paletta for follow-up of both his right shoulder, as well as, his bilateral elbow and wrist complaints. Petitioner was previously diagnosed with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Petitioner complained of numbness and tingling involving the fourth and fifth fingers. Dr. Paletta noted that the shoulder was the most problematic. He recommended an arthroscopic surgery. Dr. Paletta noted that with respect to the cubital tunnel syndrome and carpal tunnel syndrome, Petitioner continued to be symptomatic. Petitioner had electrophysiologic abnormalities that confirm the diagnosis. Dr. Paletta did not recommend doing the shoulder surgery with the carpal tunnel and cubital tunnel surgery. Dr. Paletta opined that based on the duration of his job and his job duties and the correlation of onset and worsening of his carpal tunnel and cubital tunnel symptoms to those job activities, that his job is a causative or aggravating factor in both the cubital tunnel and carpal tunnel syndromes.

Petitioner's attorney entered into evidence a deposition of Dr. Anthony Sudekum in the case of James Bauersachs a/k/a "Correctional Officer" v. Menard Correctional Center. In this deposition, Dr. Sudekum described the activity of bar rapping the cell bars on each of the 55 cells by one officer which he believed could aggravate carpal or cubital tunnel syndrome. He testified that this task was performed on two out of the three shifts. In the present case, Petitioner confirmed on cross-examination that he did not bar rap the individual cells on the 11 p.m. to 7 a.m. shift. Additionally, Dr. Sudekum testified that the frequency and duration of the activities being performed was important. He testified that if one performed the activities on a nominal basis or a less frequent basis that would have no effect, essentially, on the etiology of those conditions. He explained that if these types of activities were performed very infrequently or rarely or even say for 10 minutes a day versus an hour a day, that could make a very significant difference regarding the etiologic potential of the conditions. Petitioner testified that he performed bar rapping on the 11 p.m. to 7 a.m. shift right around ten minutes per shift.

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Attachment to Arbitration Decision
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CONCLUSIONS OF LAW

1. Petitioner failed to establish a manifestation of repetitive trauma injuries to his bilateral hands and arms on November 21, 2012, that arose out of and in the course of his employment at Menard Correctional Center. The medical records of Dr. Paletta and Dr. Phillips clearly document that Petitioner's alleged hand and arm symptoms began 7 years prior to his presentment to them in November and December 2012. Additionally, Petitioner's claim of repetitive activities that allegedly contributed to his condition is not supported by the evidence. He testified that he worked the 11 p.m. to 7 a.m. shift roughly 90% of the time since his date of hire and that during that time, he performed bar rapping right approximately 10 minutes a day during that shift. The opening and closing of cell doors was minimal on the 11 p.m. to 7 a.m. shift. Taking all these factors into account, Petitioner's claim for repetitive trauma injuries to his bilateral hands and arms is denied.
2. Based on the Arbitrator's findings regarding the issue of accident, all other issues are rendered moot.